

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Martin W. Aron (MA2008)  
EDWARDS ANGELL PALMER & DODGE LLP  
One Giralda Farms  
Madison, New Jersey 07940  
(973) 520-2300  
Attorneys for Defendant

*Document Electronically Filed*

ROBERT E. BERNARD,

Plaintiff,

v.

HELEN GRACE SPENCER, a/k/a HELEN  
GRACE McDERMID, a/k/a/ HELEN  
McDERMID SPENCER,

Defendant.

No. 07-cv-07816 SCR

**AFFIDAVIT OF MARTIN W. ARON**  
**IN SUPPORT OF MOTION TO**  
**DISMISS AMENDED COMPLAINT**

STATE OF NEW JERSEY

: ss.:

COUNTY OF MORRIS )

MARTIN W. ARON, declares as follows:

1. I am a member of the bar of this Court and of the firm of Edwards Angell Palmer & Dodge LLP, attorneys for defendant Helen Grace Spencer. I make this declaration in support of defendant's motion to dismiss the Amended Complaint.

2. I have annexed as Exhibit 1 a copy of plaintiff's original Complaint including its exhibits.

3. I have annexed as Exhibit 2 a copy of Judge Lefkowitz's August 8, 2007 Order granting plaintiff leave to replead.

4. I have annexed as Exhibit 3 a copy of the Amended Complaint, including its exhibits. The Exhibits attached to the Amended Complaint herein were

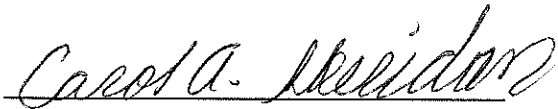
obtained from Plaintiff's Motion for Leave to File the Amended Complaint as there were no exhibits supplied to defendant with plaintiff's August 14, 2007 Amended Complaint.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 28th day of September 2007.

s/Martin W. Aron  
MARTIN W. ARON (MA2008)  
Edwards Angell Palmer & Dodge LLP  
Attorneys for Defendant  
One Giralda Farms  
Madison, New Jersey 07940  
(973) 520-2300  
email: maron@eapdlaw.com

Sworn and subscribed to before  
Me this 28<sup>th</sup> day of September 2007.



**CAROL A. SHERIDAN**  
A Notary Public of New Jersey  
My Commission Expires SEPTEMBER 21, 2009

205335

# **EXHIBIT 1**

FILED  
NOV. - 9 2006  
TIMOTHY C. IDAW  
COUNTY CLERK  
COUNTY OF WESTCHESTER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

ROBERT E. BERNARD

Plaintiff.

against

HELEN GRACE SPENCER aka  
HELEN GRACE MCDERMID aka  
HELEN MCDERMID SPENCER  
Defendant

COMPLAINT

PROMISSORY ESTOPPEL

Index No. 22122/06

Judge.....

TRIAL BY A JURY IS DEMANDED

Robert E. Bernard  
Plaintiff Pro Se  
82 Timberbrook Road  
Rockaway, New Jersey 07866  
Telephone 973 627 2007

Dated at Rockaway, New Jersey  
November 7, 2006

Robert E. Bernard  
ROBERT E. BERNARD

Plaintiff

1  
2 AS AND FOR A CAUSE OF ACTION FOR PROMISSORY ESTOPPEL

3 Plaintiff pro se Robert E. Bernard, hereinafter mentioned as Plaintiff, complains  
4 of Defendant Helen Grace Spencer as follows:

5 1. That at the time the cause of action arose Defendant was a resident of Rye  
6 Brook, Westchester County, New York and Defendant is, upon information  
7 and belief, presently residing at the aforementioned location. That at the time  
8 the cause of action arose Plaintiff was a resident of Rockaway Township,  
9 Morris County, New Jersey and is presently residing at the aforementioned  
10 location.

11 2. That Plaintiff was employed by Defendant as her Personal Assistant for  
12 about thirteen years prior to on or about June 30, 2005. That in the early days  
13 of 2004 Defendant first made an oral promise to Plaintiff to provide him  
14 with a pension should he choose to retire from her employment. That in the  
15 late days of June 2005 Defendant made an oral promise to Plaintiff to  
16 provide him with a pension of \$3,500 per month for thirteen years i.e  
17 exactly \$546,000 - should he choose to retire from her employment. That  
18 in the late days of June 2005 Defendant made an oral promise to Plaintiff  
19 to take under consideration an alternative procedure of making monthly  
20 installments to Plaintiff in multiples of \$3,500.00, up to and including a  
21 single lump sum payment of the entire sum remaining due over the full  
22 pension term, should he choose to retire from her employment.

23 3. That Plaintiff knew and then did reasonably rely upon the specific  
24 promises made by Defendant and retired from her employment on or  
25 about June 30, 2005.

26 4. That commencing on or about July 1, 2005 Plaintiff did receive monthly  
27 payments pursuant to the specific promises made by Defendant..  
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1  
2 That Plaintiff continued to receive pension installments from Defendant  
3 through on or about April 26, 2006. That pension installments were received  
4 by Plaintiff in separate sums of \$3,500.00 or in multiples of \$3,500.00. That  
5 said paid installments totaled \$56,000.00. A copy of pension installments  
6 numbered thirteen and fourteen is annexed hereto as EXHIBIT A.

7 5. That Plaintiff has demanded continued payment of Defendant both orally  
8 and in writing. That on October 2, 2006 Plaintiff mailed to Defendant a  
9 certain letter demanding an immediate payment of \$21,000.00 then due  
10 and owing to Plaintiff from Defendant. A copy of said letter is annexed hereto  
11 as EXHIBIT B. That since on or about April 26, 2006 Defendant has continued  
12 to fail to make the pension installments coming due and owing to Plaintiff  
13 pursuant to her specific promises. That there is now immediately due and  
14 owing to Plaintiff from Defendant the sum of \$24,500.00 with interest thereon.  
15 That there is due and owing to Plaintiff from Defendant for the full term of the  
16 pension the sum of \$490,000.00 with interest thereon .

17 6. That Plaintiff retired from Defendant's service in reliance upon her specific  
18 promise of a pension totaling \$546,000.00 which she promised to provide in  
19 monthly installments of at least \$3,500.00. That Defendant has failed to make a  
20 pension installment payment since the late days of April 2006. That Plaintiff is  
21 unjustly damaged as a consequence of his reliance upon Defendant's specific  
22 promises and entitled to such remedy as justice may require and the court provide.

23 7. WHEREFORE Plaintiff prays for relief in the sum of \$490,000.00 to be paid  
24 by Defendant with interest thereon and the fees, costs and disbursements of this  
25 action. That Plaintiff prays for such other, further, or other relief that the court  
26 may find just, proper, and equitable under the circumstances.


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Dated: November 1, 2006 at Rockaway Township, New Jersey

Date of signature: November 1, 2006

Respectfully,

ROBERT E. BERNARD  
Plaintiff Pro Se

H. G. SPENCER A.K.A. H. G. SPENCER MC DERMID BIRCH LANE GREENWICH, CT 06830		51-147 211 6411185107 DATE <u>Jan. 14 '06</u>	2826
PAY TO THE ORDER OF <u>Robt. E. Bernard</u>		\$3,500 <sup>00</sup> / <sub>100</sub>	
<u>three thousand five hundred + <sup>40</sup>/<sub>100</sub></u>		DOLLARS	
 <b>PUTNAM TRUST</b> <small>a division of THE BANK OF NEW YORK                  10 MASON STREET                  GREENWICH, CT 06830</small>			
MEMO <u>#13</u>		<u>H. Spencer</u>	
⑆021101470⑆ ⑈6411185107⑈ 2826			

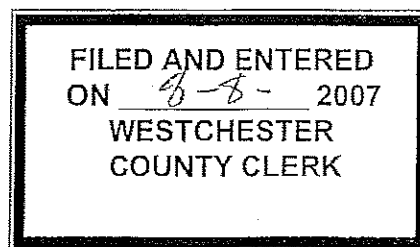
H. G. SPENCER A.K.A. H. G. SPENCER MC DERMID BIRCH LANE GREENWICH, CT 06830		51-147 211 6411185107 DATE <u>Feb. 14 '06</u>	2825
PAY TO THE ORDER OF <u>Robert E. Bernard</u>		\$3,500 <sup>00</sup> / <sub>100</sub>	
<u>three thousand five hundred + <sup>40</sup>/<sub>100</sub></u>		DOLLARS	
 <b>PUTNAM TRUST</b> <small>a division of THE BANK OF NEW YORK                  10 MASON STREET                  GREENWICH, CT 06830</small>			
MEMO <u>#12</u>		<u>H. Spencer</u>	
⑆021101470⑆ ⑈6411185107⑈ 2825			



## **EXHIBIT 2**

SUPREME COURT - STATE OF NEW YORK  
IAS PART WESTCHESTER COUNTY

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.



PRESENT: HON. JOAN B. LEFKOWITZ

Justice

Index No.: 22122/06

Motion Date: 8/3/07

-----X  
ROBERT E. BERNARD,

Plaintiff,

- against -

HELEN GRACE SPENCER a/k/a HELEN GRACE  
McDERMID a/k/a HELEN McDERMID SPENCER,Defendants.  
-----X

The following papers numbered 1 to 32 read on this renewed motion by defendant to dismiss complaint and plaintiff's motion to serve amended complaint and for other relief.

	Papers Numbered
Notice of Motion/Order to Show Cause-Affidavits	1-2
Plaintiff's Motion 5	3-5
Answering Affidavits	
Replying Affidavits	6
Affidavits	
Filed Papers Additional Plaintiff Papers	7-10
Pleadings-Exhibits-Stipulations-Minutes	11-31
Briefs: Plaintiffs/Petitioner's Def. Resp.	32

Upon the foregoing papers it is ORDERED that the motion by defendant is denied as academic since the Court grants plaintiff leave to serve an amended complaint in the form proposed, which service shall be made within twenty (20) days after service of a copy of this order with notice of entry. All other relief sought by plaintiff is denied as moot in view of the amended pleading.

Robert E. Bernard  
Plaintiff Pro Se  
82 Timberbrook Road  
Rockaway, New Jersey 07866

Martin W. Aron, Esq.  
Edwards Angell Palmer & Dodge, LLP  
Attorneys for Defendant  
750 Lexington Avenue  
New York, New York 10022

DATED: August 8, 2007

ENTERED:

  
JOAN B. LEFKOWITZ, J.S.C.

## **EXHIBIT 3**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

ROBERT E. BERNARD  
Plaintiff

MOTION FOR LEAVE TO AMEND COMPLAINT

against

PLAINTIFF REQUESTS THAT THIS MOTION  
COME BEFORE THE COURT ON JUNE 1, 2007.  
ASSOCIATED PAPERS ARE CALENDARERED TO  
COME BEFORE THE COURT ON JUNE 1, 2007.

INDEX NUMBER 22122-2006

Judge Joan B. Lefkowitz

HELEN GRACE SPENCER  
HELEN GRACE MCDERMID  
HELEN MCDERMID SPENCER  
Defendant

A Trial by Jury is Demanded

Robert E. Bernard  
82 Timberbrook Road  
Rockaway, New Jersey 07866  
Telephone 973 627 2007

dated at Rockaway, NJ on May 29, 2007.

Respectfully,



ROBERT E. BERNARD  
Plaintiff

22122-2006

TABLE OF CONTENTS FOR PLAINTIFF'S MOTION FOR LEAVE TO  
AMEND COMPLAINT

Table of Contents p2

Motion pp 3-5

Exhibits

P1 Plaintiff's Complaint as to a Cause of Action for Promissory Estoppel pp 6 - 11

P2 Colloquy regarding defendant's allegation that plaintiff received "severance".pp 12 -14

P3 Colloquy regarding defendant's allegation of plaintiff's "culpable conduct". pp 15 -16

P4 Plaintiff's Interrogatories Set #1 and Request for Admissions #1 pp 17 - 20

P5 Plaintiff's Interrogatories Set #5 pp 21 - 23

P6 Defendant's Responses to Interrogatory Set #1 and Request for  
Admissions #1 pp 24 - 30

P7 Certificate of Service of Motion for Leave to Amend Complaint p 31

P8 Notice of Motion for Leave to Amend Complaint p. 32

MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiff respectfully moves the court for leave to add a second and third cause of action to his complaint for promissory estoppel filed with the court on November 9, 2006. To wit:

AS FOR A SECOND CAUSE OF ACTION FOR WILLFUL FRAUD, DECEPTION AND MISREPRESENTATION

- 1 That defendant Helen Grace Spencer stated in her April 30, 2007 response to plaintiff's interrogatories [annexed herein as P6] of March 15, 2007 that she paid plaintiff "monthly severance pay".
2. That plaintiff never received "monthly severance pay" or any "severance pay" from defendant. [ colloquy regarding defendant's claim is annexed herein as P2]
3. That defendant's assertion is a willful act of fraud, deception, and misrepresentation.
- 4.. That a second cause of action for willful fraud, deception, and misrepresentation has risen based on the defendant's assertion that her payments to plaintiff were "monthly severance pay".
5. That this second cause of action arose on April 30, 2007.
- 6.. That defendant's written claim constitutes a fraud against both plaintiff and the court.
7. That defendant has inflicted emotional and physical harm on plaintiff by her willful act of fraud, deception, and misrepresentation.
8. That plaintiff has suffered from insomnia, depression and attenuated hypertension since receiving defendant's responses to his interrogatories.
9. That plaintiff has been damaged economically as a consequence of defendant's willful act of fraud, deception and misrepresentation. He worries that he will be able to afford to remain in his home.

AS FOR A THIRD CAUSE OF ACTION FOR ABUSE OF PROCESS

1. That Defendant has perverted this legal process to gain revenge for some alleged unspecified act on plaintiff's part.
2. That this alleged unspecified act is the subject of colloquy between plaintiff and defendant [P3]; in interrogatories sets #1 [P4], and #5 [P5], and defendant's responses [P6].
3. That defendant has perverted this legal process to gain revenge for plaintiff's complaint of her violation of his rights in these judicial proceedings.
4. That a third cause of cause of action for abuse of process has risen based on the defendant's assertion that her payments to plaintiff were "monthly severance pay"
5. That plaintiff has never received "monthly severance pay" or any "severance pay" from defendant.
6. That this third cause of action arose on April 30, 2007.
7. That defendant has inflicted and continues to inflict emotional and physical harm on plaintiff by her perverse, vengeful, and abusive use of this process.
8. That plaintiff has suffered from insomnia, depression and attenuated hypertension since receiving defendant's response to his interrogatories.
9. That plaintiff has been damaged economically as a consequence of defendant's perverse, vengeful, and abusive use of this process. He worries that he will be able to afford to remain in his home.

Plaintiff also moves the court for leave to substitute the following prayer for relief for paragraph 7, lines 23 through 26 of plaintiff's complaint as for an action for promissory estoppel {annexed herein as P1 }.

WHEREFORE plaintiff prays for relief in the sum of \$1,470,000, [ONE MILLION FOUR HUNDRED SEVENTY THOUSAND DOLLARS], ie. \$490,000. in compensatory

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3 damages, and \$980,000 in punitive damages to be paid by defendant. That interest on  
4 this sum also be paid by defendant along with the fees, costs and disbursements of this  
5 action. That plaintiff prays for such further, or other relief that the court may find just,  
6 proper, and equitable under the circumstances.  
7

8 dated at Rockaway, New Jersey on May 29, 2007

9 Respectfully,

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12 Robert E. Bernard  
Plaintiff  
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FILED  
NOV - 9 2006  
TIMOTHY C. DEER  
CLERK  
COUNTY OF WESTCHESTER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

ROBERT E. BERNARD

Plaintiff.

against

HELEN GRACE SPENCER aka  
HELEN GRACE MCDERMID aka  
HELEN MCDERMID SPENCER  
Defendant

COMPLAINT

PROMISSORY ESTOPPEL

Index No. ....

22122/06

Judge.....

TRIAL BY A JURY IS DEMANDED

Robert E. Bernard  
Plaintiff Pro Se  
82 Timberbrook Road  
Rockaway, New Jersey 07866  
Telephone 973 627 2007

Dated at Rockaway, New Jersey  
November 9, 2006

Robert E. Bernard  
ROBERT E. BERNARD

Plaintiff

AS AND FOR A CAUSE OF ACTION FOR PROMISSORY ESTOPPEL

Plaintiff pro se Robert E. Bernard, hereinafter mentioned as Plaintiff, complains of Defendant Helen Grace Spencer as follows:

1. That at the time the cause of action arose Defendant was a resident of Rye Brook, Westchester County, New York and Defendant is, upon information and belief, presently residing at the aforementioned location. That at the time the cause of action arose Plaintiff was a resident of Rockaway Township, Morris County, New Jersey and is presently residing at the aforementioned location.

2. That Plaintiff was employed by Defendant as her Personal Assistant for about thirteen years prior to on or about June 30, 2005. That in the early days of 2004 Defendant first made an oral promise to Plaintiff to provide him with a pension should he choose to retire from her employment. That in the late days of June 2005 Defendant made an oral promise to Plaintiff to provide him with a pension of \$3,500 per month for thirteen years i.e exactly \$546,000 - should he choose to retire from her employment. That in the late days of June 2005 Defendant made an oral promise to Plaintiff to take under consideration an alternative procedure of making monthly installments to Plaintiff in multiples of \$3,500.00, up to and including a single lump sum payment of the entire sum remaining due over the full pension term, should he choose to retire from her employment.

3. That Plaintiff knew and then did reasonably rely upon the specific promises made by Defendant and retired from her employment on or about June 30, 2005.

4. That commencing on or about July 1, 2005 Plaintiff did receive monthly payments pursuant to the specific promises made by Defendant..

1  
2 That Plaintiff continued to receive pension installments from Defendant  
3 through on or about April 26, 2006. That pension installments were received  
4 by Plaintiff in separate sums of \$3,500.00 or in multiples of \$3,500.00. That  
5 said paid installments totaled \$56,000.00. A copy of pension installments  
6 numbered thirteen and fourteen is annexed hereto as EXHIBIT A.

7 5. That Plaintiff has demanded continued payment of Defendant both orally  
8 and in writing. That on October 2, 2006 Plaintiff mailed to Defendant a  
9 certain letter demanding an immediate payment of \$21,000.00 then due  
10 and owing to Plaintiff from Defendant. A copy of said letter is annexed hereto  
11 as EXHIBIT B. That since on or about April 26, 2006 Defendant has continued  
12 to fail to make the pension installments coming due and owing to Plaintiff  
13 pursuant to her specific promises. That there is now immediately due and  
14 owing to Plaintiff from Defendant the sum of \$24,500.00 with interest thereon.  
15 That there is due and owing to Plaintiff from Defendant for the full term of the  
16 pension the sum of \$490,000.00 with interest thereon .

17 6. That Plaintiff retired from Defendant's service in reliance upon her specific  
18 promise of a pension totaling \$546,000.00 which she promised to provide in  
19 monthly installments of at least \$3,500.00. That Defendant has failed to make a  
20 pension installment payment since the late days of April 2006. That Plaintiff is  
21 unjustly damaged as a consequence of his reliance upon Defendant's specific  
22 promises and entitled to such remedy as justice may require and the court provide.

23 7. WHEREFORE Plaintiff prays for relief in the sum of \$490,000.00 to be paid  
24 by Defendant with interest thereon and the fees, costs and disbursements of this  
25 action. That Plaintiff prays for such other, further, or other relief that the court  
26 may find just, proper, and equitable under the circumstances.

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Dated: November 1, 2006 at Rockaway Township, New Jersey

Date of signature: November 1, 2006

Respectfully,

*Robert E. Bernard*

ROBERT E. BERNARD  
Plaintiff Pro Se

# **EXHIBIT A**

<b>H. G. SPENCER</b> <b>A.K.A. H. G. SPENCER MC DERMID</b> BIRCH LANE GREENWICH, CT 06830		51-147 211 6411185107 DATE <u>Jan. 14 '06</u>	2826
PAY TO THE ORDER OF	<u>Robt. E. Bernard</u>	\$3,500 <sup>00</sup> / <sub>100</sub>	
<u>three thousand five hundred + <sup>no</sup>/<sub>100</sub></u>		DOLLARS	
<b>PUTNAM TRUST</b> <small>a division of THE BANK OF NEW YORK</small> <small>10 Nassau Street</small> <small>Greenwich, CT 06830</small>			
MEMO <u>#13</u>		<u>A. Spencer</u>	
@0211014701 @6411185107 2826			

<b>H. G. SPENCER</b> <b>A.K.A. H. G. SPENCER MC DERMID</b> BIRCH LANE GREENWICH, CT 06830		51-147 211 6411185107 DATE <u>Feb. 14 '06</u>	2825
PAY TO THE ORDER OF	<u>Robert E. Bernard</u>	\$3,500 <sup>00</sup> / <sub>100</sub>	
<u>three thousand five hundred + <sup>no</sup>/<sub>100</sub></u>		DOLLARS	
<b>PUTNAM TRUST</b> <small>a division of THE BANK OF NEW YORK</small> <small>10 Nassau Street</small> <small>Greenwich, CT 06830</small>			
MEMO <u>#12</u>		<u>A. Spencer</u>	
@0211014701 @6411185107 2825			

# **EXHIBIT B**

82 Timberbrook Road  
Rockaway, NJ 07866  
October 2, 2006

Helen G. Spencer  
Sterling Glen 1200 King Street  
Rye Brook, NY 10573

Dear Helen:

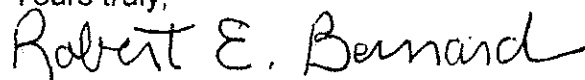
I hope this letter finds you well and happy. Enclosed are the 2 pairs of earrings which you left in my home and car. Also please find the gold and pearl jeweled pin which you left in my care to take for repair.

I worked for you as your personal assistant for a period of about thirteen years. Last year while I was still in your employment we discussed the possibility of my retirement based upon a pension that you would provide. I asked you for a pension of \$3,500. to be paid by you every month for a period of thirteen years if I chose to retire. You also had the option to make a lump sum payments(s) if you so desired. My request was made both orally on several occasions and in writing as well. Indeed you may have a certain letter which I left with you in your apartment at Unit 237. I also sent this letter via fax to your attorney Eric Seltzer Esq. The letter spells out the specific request described once again in this message.

As you well know you agreed to my request and promised me a pension of at least \$3,500 every month for thirteen years - a total then of \$546,000 dollars. I then reasonably relied upon your solemn promise and retired from your service. As you also well know I would not have made this decision to leave my position were it not for your specific promise. These alone are the amounts; time period; and arrangement you promised. No other.

Now I have received sixteen pension payments from you totalling \$56,000. I received your last payment by check in April of this year. Payments due after that date have not been made. Kindly make an immediate \$21,000. payment to me and future monthly payments of at least \$3,500. to honor your promise. Your failure to make these payments as requested will cause me to remedy your unjust action in the Courts. I hope this course of action will not be necessary. Please avoid this wasteful use of our time and resources by honoring your solemnly made promise to me upon which I retired in reliance.

Yours truly,



ROBERT E. BERNARD



# **EXHIBIT C**

Colloquy regarding defendant's purported "severance" payments to plaintiff.

3/15/07

3. A. Did you ever ask Plaintiff if he had told anyone about the pension he was receiving from you?
- B. Did you ask this question of Plaintiff in 2006?
- C. What was your reason(s) for asking this question?
- D. What was the Plaintiff's reply to your question?

4/30/07

DEFENDANT'S RESPONSE

".....defendant denies that she paid to plaintiff a "pension" as alleged in the Complaint. Instead, defendant voluntarily paid to plaintiff a monthly severance from the time plaintiff ceased working as defendant's personal assistant in or about July 2005 through in or about April 2006. Defendant does not recall asking plaintiff whether plaintiff discussed the severance with anyone else."

and

3/15/07

2. A Do you change your mind more than most people?

NO RESPONSE

- B. Did you change your mind about whether to continue making pension payments to the plaintiff?
- C. Did you change your mind about whether to continue making pension payments to the Plaintiff because of the alleged "culpable conduct" mentioned in your Answer?

4/30/07

DEFENDANT'S RESPONSE to 2B and 2C

".....defendant denies that she changed her mind about the severance payments made to plaintiff from in or about July 2005 through in or about April 2006 and denies that such payments were a "pension" as alleged in the Complaint."

and

3/15/07

4.A Did plaintiff ever ask you to sign a contract regarding his pension?

1. When, if anytime, did he do this?
2. Was the reason that Plaintiff did not request a contract in writing that he wanted his relationship with you to be founded on mutual trust?
3. If not, what was the reason(s) for his inaction?

4/30/07

#### DEFENDANT'S RESPONSE

".....defendant denies that plaintiff had a "pension" as defined in the Complaint or as suggested herein. Defendant does not recall being asked to sign such a writing. Defendant denies knowledge of why plaintiff acted or did not act as alleged in this case.

5/9/07

#### PLAINTIFF'S RESPONSE

You were making PENSION payments to me so, as you know, your answer is untrue. You speak of "monthly severance" payments now for the first time. So then again.

1. Did your Attorney Mr. Aron direct, suggest, or influence you to answer in this way?
2. Why do so many of your checks made to the order of plaintiff between July 2005 and April 2007 display the memorandum "pension" or some abbreviation for "pension"? Please send me the unaltered images of said checks as requested in my Request for Production of Documents dated March 15, 2007. Your failure to produce these check images will be noted by both judge and jury.
3. It has been nearly five months since you were served with my Complaint. Why then has it taken all that time for you to discover that you were paying me "severance"?
4. Prior to April 30, 2007 did you ever tell plaintiff or anyone else

you were making "severance" payments to plaintiff?

a. If so, what are their names and addresses?

5. Was any reference to "severance" ever written or spoken

by either plaintiff or defendant prior to April 30, 2007?

6. Did plaintiff ask you for "severance"?

7. Did you ever tell plaintiff your payments to him were "severance"?

8. Why were these purported monthly "severance" installments not paid monthly?

9. Why did these purported monthly "severance" installments vary so markedly  
in the amounts paid to plaintiff?

10. Why would the plaintiff retire for \$56,000 in "severance"?

NO RESPONSE

Colloquy regarding defendant's claim of plaintiff's "culpable conduct".

PLAINTIFF 3/15/07

You claim in your Answer to Plaintiff's Complaint that: "the alleged damages to plaintiff were caused in whole or in part by the culpable conduct of said plaintiff without any fault on the part of the answering defendant."

.What is the exact nature of the alleged "culpable conduct" you claim in the above statement? Please describe it fully.

DEFENDANT'S RESPONSE 4/30/07

".....plaintiff engaged in "culpable conduct" in breach of his duties to defendant over the years by (1) discussing with others personal confidential and personal business of defendant's without defendant's consent in ways that were personally wounding and distressing to defendant; and 2) taking advantage of his position of trust and defendant's advancing age and health problems to obtain or to attempt to obtain money and benefits for himself at defendant's expense (including but not limited to filing this lawsuit for a purported "pension" to which defendant never agreed).

3/15/07 PLAINTIFF When did the alleged "culpable conduct" occur?

4/30/07 DEFENDANT'S RESPONSE ".....defendant does not know at present the exact dates of plaintiff's "culpable conduct," but upon information and belief it occurred from time to time during the years when plaintiff rendered personal assistance to defendant and continues to the present day with this spurious action seeking a "pension" to which plaintiff is not entitled."

3/15/07 PLAINTIFF

.What is (are) the name(s) and address(es) of persons, apart from Plaintiff, if any, involved in the alleged "culpable conduct"? Please include the name(s) of any witness(es) and their address(es) as well as the names of any other participant(s) and their address(es). in your

answer.

NO RESPONSE

5/9/07 PLAINTIFF

You have not answered my question, So again:

1. What is the exact nature of the alleged "culpable conduct" you claim?
2. Please fully describe what happened the last time it occurred?
3. In what month and year did the alleged "culpable" conduct last occur?
4. What are the names and addresses of persons, apart from plaintiff, involved the last time the alleged "culpable conduct" occurred. Please include the names and addresses of any witnesses as well?
5. If the alleged "culpable conduct" has a long history why did you continue to make payments to plaintiff through on or about April 26, 2006?
6. If the alleged "culpable conduct" has a long history why did you continue to be on excellent terms with plaintiff until March or April of 2006?

NO RESPONSE

22122-2006

INTERROGATORY SET 1 consisting of Interrogatories #1 - Interrogatories #3

Dear Mrs. Spencer:

This inquiry is not and should not be understood as an admission , implicit or otherwise, that either you or your attorney have lawfully appeared or pleaded in these proceedings. The inquiry is made in accordance with Article 31 of the CPLR.

1. What are all the names you now use or have ever used? Please list all your names in full.

2. You claim in your Answer to Plaintiff's Complaint that: "the alleged damages to plaintiff were caused in whole or in part by the culpable conduct of said plaintiff without any fault on the part of the answering defendant."

A. What is the exact nature of the alleged "culpable conduct" you claim in the above statement? Please describe it fully.

B. When did the alleged "culpable conduct" occur?

C. What is (are) the name(s) and address(es) of persons, apart from Plaintiff , if any, involved in the alleged "culpable conduct"? Please include the name(s) of any witness(es) and their address(es) as well as the names of any other participant(s) and their address(es) in your answer.

3.. A Did you ever ask Plaintiff if he had told anyone about the pension he was receiving from you?

B. Did you ask this question of Plaintiff in 2006?

C. What was your reason(s) for asking this question?

D. What was the Plaintiff's reply to your question?

ADMIT/DENY QUESTIONNAIRE 1 consisting of question #1 - question #3

22122-2006

ADMIT/DENY QUESTIONNAIRE 1 consisting of question #1 - question #3

Please answer questions #1 all parts, #2 all parts, and #3 all parts  
either Yes or No. Please write Yes or No on the line next to the end  
of each item.

1. A Was 1200 King Street, Rye Brook, New York 10573 your principal  
mailing address on June 1, 2006 ? \_\_\_\_\_

B Was 1200 King Street, Rye Brook, New York 10573 your principal  
residence on June 1, 2006? \_\_\_\_\_

2. A Do you change your mind more than most people? \_\_\_\_\_

B Did you change your mind about whether to continue making  
pension payments to the Plaintiff? \_\_\_\_\_

C. Did you change your mind about whether to continue making  
payments to the Plaintiff because of the alleged "culpable conduct"  
mentioned in your Answer.? \_\_\_\_\_

3.. A Did any of the individuals listed below ever know of Plaintiff's employment  
with you? \_\_\_\_\_

Which of these individuals had such knowledge? Please write yes next  
to the name of each individual who had such knowledge and write no  
next to the name of each individual who did not have such knowledge.

Eric Seltzer, Esq. \_\_\_\_\_

Robert Barnum, Esq. \_\_\_\_\_

Bernadine O Shea \_\_\_\_\_

Tamsin Ross \_\_\_\_\_

Dr. Sally Beling \_\_\_\_\_

Dr. Ken Meineker \_\_\_\_\_

Dr. James Katus \_\_\_\_\_

Diane Petroso \_\_\_\_\_

Gerry White \_\_\_\_\_

Dr. William Grace \_\_\_\_\_

Diane Sperdutti \_\_\_\_\_

Sofia DuBois \_\_\_\_\_

Michael Fratello \_\_\_\_\_

Ralph Murray \_\_\_\_\_

Lucy Barnes \_\_\_\_\_

Carolyn Meyer \_\_\_\_\_

Fr. Stephen DeLuca \_\_\_\_\_

Helen Meyers \_\_\_\_\_



Keith Varcoe _____	22122-2006 Rev. Tom Oakes _____
Vincent Tucciarone _____	Kathryn Noone _____
Robert Henrey _____	Dr. John Schaefer _____
Sylvia (Fran's friend) _____	Dr. Robert Singer _____
Dennis Lyndon _____	Rev. Tim Keller _____

B Have any staff, past or present, at any of the entities listed below ever known of Plaintiff's employment with you? Please write yes next to those entities where a staff members) has had any knowledge of Plaintiff's employment with you and no next to the name(s) of those entities where he (she) (they) never had such knowledge.

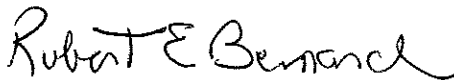
Silver Hill Hospital , New Canaan, CT _____	Loews Denver Hotel _____
Sterling Glen, Rye Brook, NY _____	Calamigos Ranch, Malibu CA _____
Lindquist Agency, Greenwich, CT _____	Gould Farm, Monterey, MA _____
NY Polygraph & Lie Detection, NYC _____	Four Seasons Place Boston _____
Surrey Hotel, NYC _____	Hyatt Regency Hotel, Greenwich, CT _____
Canyon Ranch, Lenox, MA _____	Toftree's State College, PA _____
Grace and White, NYC _____	Lexus of Greenwich _____
The Delamar, Greenwich, CT _____	Hampton Inn, Denville, NJ _____
Rudy's Limo, Greenwich _____	Pet Taxi, NYC _____
Greenwich Animal Hospital _____	Biscuits and Bath, NYC _____
Karis Community, Denver, CO. _____	Putnam Trust Co., Greenwich CT _____
Griffin Ford, Greenwich, CT _____	Insurance & Financial Services Stamford, CT _____
Ivey, Barnum and O'Mara, Greenwich _____	Franciscan Oaks, Denville, NJ _____

22122-2006

Not to burden you I will pause for now. Please reply to Plaintiff within twenty days as required by law CPLR Rule 3133. I invite you to provide specific responses to all the claims found in my Complaint and will continue in this vein until all the claims raised in my Complaint have been specifically and completely addressed. Thank you for your anticipated cooperation.

dated at Rockaway, New Jersey on March 15 , 2007

Respectfully,

A handwritten signature in black ink that reads "Robert E. Bernard". The signature is written in a cursive, flowing style.

Robert E. Bernard  
Plaintiff

Interrogatories Set #5 consisting of Innerrogatory #9 in rebuttal 22122-2006  
to defendant's answer of April 30, 2007

Dear Mrs Spencer:

You have made meaningful and completely truthful responses to only one of plaintiff's questions... Your answers, or more properly, lack of answers when combined with your attorney's spurious and inappropriate "objections" will speak deafeningly loudly to both judge and jury. Then, please include in each of your answers whether or not your Attorney Mr. Aron directed, suggested or influenced you to answer in the way you have. As I said to you in our conversation of March 20, 2007, "just tell the truth" I assure you that this court will not permit my claims to go unexamined and my questions to go unanswered..

Your newly -minted tale of purported "severance" is preposterous on its face.

I also promise you that all these issues will be raised at trial before a judge and jury.whatever you may or may not choose to answer truthfully here.

All you will accomplish through "stonewalling" is postpone the day when the truth comes out. If that "game is worth the candle" to you, well - go ahead. I can't stop you - but the court can.

**PLAINTIFF'S REBUTTAL AND FOLLOW UP QUESTIONS TO DEFENDANT'S ANSWER OF APRIL 30, 2007**

9. These are follow up questions to the few responses which you made under oath before God. on April 30, 2007.

A. Re Interrogatory 1

Plaintiff's question:is What are all the the names you have ever used?

So then again :

1.Did you also use the names Helen Miller; Helen Miller Grace; Helen Grace, HM Spencer McDermid, HMG Spencer McDermid, and other names as well?.

2 What other names besides those 9 already mentioned in this matter have you used?

3. What reason(s) do you have for using so many names?

for "pension"? Please send me the unaltered images of said checks as requested in my Request for Production of Documents dated March 15, 2007. Your failure to produce these check images will be noted by both judge and jury.

3. It has been nearly five months since you were served with my Complaint..

Why then has it taken all that time for you to discover that you were paying me "severance"?

: 4. Prior to April 30, 2007 did you ever tell plaintiff or anyone else you were making "severance" payments to plaintiff?

a. If so, what are their names and addresses?

5. Was any reference to "severance" ever written or spoken by either plaintiff or defendant prior to April 30, 2007?

6. Did plaintiff ask you for "severance" ?

7.. Did you ever tell plaintiff your payments to him were "severance"?

8.. Why were these purported monthly "severance" installments not paid monthly?

9.. Why did these purported monthly "severance" installments vary so markedly in the amounts paid to plaintiff?

10. Why would the plaintiff retire for \$56,000 in "severance"?

22122-2006

D. You are being evasive by responding to a question I never asked.

Plaintiff never asked you if you knew " what the foregoing individuals knew or did not know about the terms and conditions of plaintiff's work as defendant's personal assistant.? " So I will again ask you to answer.:

1. Which of these people do you believe knew that plaintiff worked for you?  
(Select from list already provided to you)

E. Again you are being evasive by responding to a question I never asked. Plaintiff never asked you if you knew "what the foregoing entities (or employees thereof) know or do not know about the terms and conditions of plaintiff's work as defendant's personal

assistant?" So I will again ask you to answer:

1. Which of these entities do you believe have or had employees who knew that plaintiff worked for you?  
(Select from list already provided to you)

F Re your remark about your empowerment to give a one time gift of \$1,000,000.

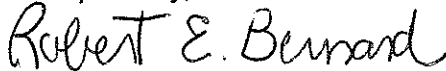
A half truth. You made this disclosure to me while a guest at my home sometime in January 2006 before departing on a vacation trip with me to Tucson, Arizona. As you know I was not your Personal Assistant in January 2006. I took your remark to mean you were considering making the one time gift of one million dollars to me. So then again:

1. Was I your personal assistant in January 2006?
2. If not, why did you make the disclosure to me?
3. Since I was then receiving a purported "severance" of just \$56,000 why would you possibly tell me this before we're about to leave for a vacation.

4. If your remark was made with the intent of seeking my advice, , why then didn't you ever ask me for this purported sought-after advice?

dated at Rockaway, New Jersey on May 9, 2007

Respectfully,

  
Robert E. Bernard  
Plaintiff

# **EXHIBIT D**

92  
Martin W. Aron, Esq.  
EDWARDS ANGELL PALMER & DODGE LLP  
Attorneys for Defendant  
750 Lexington Avenue  
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

ROBERT E. BERNARD,

Plaintiff,

-v.-

HELEN GRACE SPENCER, a/k/a HELEN  
GRACE McDERMID, a/k/a HELEN  
McDERMID SPENCER,

Defendant.

Index No. 22122/06

DEFENDANT'S RESPONSES TO  
INTERROGATORIES

Defendant Helen Grace Spencer, by way of response to plaintiff's interrogatories,  
responds as follows:

GENERAL OBJECTIONS

1. Defendant objects to Plaintiff's Interrogatories to the extent that Plaintiff incorrectly and overbroadly defines words set forth therein.
2. Defendant objects to Plaintiff's Interrogatories to the extent that they seek information not within Defendant's possession regarding non-parties, and statements not made or authorized by Defendant.
3. Defendant objects to Plaintiff's Interrogatories insofar as they seek information beyond the scope of any claim or defense asserted in this case.

4. Defendant objects to Plaintiff's Interrogatories that are overly broad, irrelevant, vague and unduly burdensome; that go far beyond the allegations of any claim or defense asserted herein; that are not appropriately limited to subjects, times and areas relevant to this action; that require legal conclusions; and that are not calculated to lead to the discovery of admissible evidence.

5. In responding, Defendant does not concede that any of the information requested is relevant to this action and expressly reserves the right to object to further discovery of any matter raised by this response, or any portion thereof.

6. Defendant reserves the right to provide supplemental responses as additional information becomes available or is made known to Defendant.

7. Defendant objects to Plaintiff's Interrogatories to the extent they seek information subject to the attorney-client, work product, or other applicable privilege.

8. Defendant objects to Plaintiff's Interrogatories to the extent Plaintiff seeks information unrelated to any statement or claim by Defendant, and to the extent Plaintiff seeks information regarding the knowledge or state of mind of non-parties.

9. Defendant objects to Plaintiff's Interrogatories to the extent Plaintiff seeks information not within the possession, custody, or control of Defendant regarding issues that are proper subjects for experts, which have not yet been designated.

10. Defendant incorporates by reference the foregoing Objections in response to each Interrogatory whether or not set forth at length below.

Notwithstanding the foregoing Objections and without waiving same, Defendant responds as follows:

INTERROGATORY 1: What are all the names you now use or have ever used? Please list all your names in full.

RESPONSE: Notwithstanding the foregoing General Objections incorporated herein by



reference and without waiving same, defendant has used the names Helen M. Grace, Helen Grace Spencer, and Helen Grace McDermid, and Helen Grace Spencer McDermid.

INTERROGATORY 2: You claim in your Answer to Plaintiff's Complaint that: "the alleged damages to plaintiff were caused in whole or in part by the culpable conduct of said plaintiff without any fault on the part of the answering defendant." A. What is the exact nature of the alleged "culpable conduct" you claim in the above statement? Please describe it fully.

RESPONSE: Notwithstanding the foregoing General Objections incorporated herein by reference and without waiving same, plaintiff engaged in "culpable conduct" in breach of his duties to defendant over the years by (1) discussing with others confidential and personal business of defendant's without defendant's consent in ways that were personally wounding and distressing to defendant; and (2) taking advantage of his position of trust and defendant's advancing age and health problems to obtain or to attempt to obtain money and benefits for himself at defendant's expense (including but not limited to filing this lawsuit for a purported "pension" to which defendant never agreed).

B. When did the alleged "culpable conduct" occur?

RESPONSE: Notwithstanding the foregoing General Objections incorporated by reference herein and without waiving same, defendant does not know at present the exact dates of plaintiffs' "culpable conduct," but upon information and belief it occurred from time to time during the years when plaintiff rendered personal assistance to defendant and continues to the present day with this spurious action seeking a "pension" to which plaintiff is not entitled.

C. What is (are) the name(s) and address(es) of persons, apart from Plaintiff, if any, involved in the alleged "culpable conduct"? Please include the name(s) of any witness(es) and their address(es) as well as the names of any other participant(s) and their address(es) in your answer.

RESPONSE: Notwithstanding the foregoing General Objections incorporated herein by reference and without waiving same, defendant is not aware of any other person involved with or participating in plaintiff's "culpable conduct."

- 3. A. Did you ever ask Plaintiff if he had told anyone about the pension he was receiving from you?
- B. Did you ask this question of Plaintiff in 2006?
- C. What was your reason(s) for asking this question?
- D. What was the Plaintiff's reply to your question?

RESPONSE: Notwithstanding the foregoing General Objections incorporated herein by reference and without waiving same, defendant denies that she paid to plaintiff a "pension" as alleged in the Complaint. Instead, defendant voluntarily paid to plaintiff a monthly severance from the time plaintiff ceased working as defendant's personal assistant in or about July 2005 through in or about April 2006. Defendant does not recall asking whether plaintiff discussed the severance with anyone else.

1.A. Was 1200 King Street, Rye Brook New York 10573 your principal mailing address on June 1, 2006? Admit.

B. Was 1200 King Street, Rye Brook, New York 10573 your principal residence on June 1, 2006? Admit.

- 2.A. Do you change your mind more than most people?
- B. Did you change your mind about whether to continue making pension payments to the Plaintiff?
- C. Did you change your mind about whether to continue making payments to the Plaintiff because of alleged "culpable conduct" mentioned in your Answer?

RESPONSE: Notwithstanding the General Objections incorporated by reference herein and without waiving same, and notwithstanding defendant's objection to these interrogatories as unduly harassing and vexatious, defendant denies that she changed her mind about the severance

payments made to plaintiff from in or about July 2005 through in or about April 2006 and denies that such payments were a "pension" as alleged in the Complaint.

3.A. Did any of the individuals listed below ever know of Plaintiff's employment with you?

Which of these individuals had such knowledge? Please write yes next to the name of each individual who had such knowledge and write no next to the name of each individual who did not have such knowledge.

Eric Seltzer, Esq. _____	Robert Barnum, Esq. _____
Bernadine O'Shea _____	Tamsin Ross _____
Dr. Sally Beling _____	Dr. Ken Meineker _____
Dr. James Katus _____	Diane Petroso _____
Gerry White _____	Dr. William Grace _____
Diane Sperdutti _____	Sofia DuBois _____
Michael Fratello _____	Ralph Murray _____
Lucy Barnes _____	Carolyn Meyer _____
Fr. Stephen DeLuca _____	Helen Meyers _____
Keith Varcoe _____	Rev. Tom Oakes _____
Vincent Tucciarone _____	Kathryn Noone _____
Robert Henrey _____	Dr. John Schaefer _____
Sylvia (Fran's friend) _____	Dr. Robert Singer _____
Dennis Lyndon _____	Rev. Tim Keller _____

RESPONSE: Notwithstanding the foregoing General Objections incorporated by reference herein and without waiving same, defendant avers that she does not know what the

foregoing individuals know or do not know about the terms and conditions of plaintiff's work as defendant's personal assistant.

B. Have any staff, past or present, at any of the entities listed below ever known of Plaintiff's employment with you? Please write yes next to those entities where a staff member has had any knowledge of Plaintiff's employment with you and no next to the name(s) of those entities where he (she) (they) never had such knowledge.

Silver Hill Hospital, New Canaan, CT _____	Loews Denver Hotel _____
Sterling Glen, Rye Brook, NY _____	Calamigos Ranch, Malibu, CA _____
Lindquist Agency, Greenwich, CT _____	Gould Farm, Monterey, MA _____
NY Polygraph & Lie Detection, NYC _____	Four Seasons Place, Boston _____
Surrey Hotel, NYC _____	Hyatt Regency Hotel, Greenwich, CT _____
Canyon Ranch, Lenox, MA _____	Toftree's State College, PA _____
Grace and White, NYC _____	Lexus of Greenwich _____
The Delamar, Greenwich, CT _____	Hampton Inn, Denville, NJ _____
Rudy's Limo, Greenwich, CT _____	Pet Taxi, NYC _____
Greenwich Animal Hospital _____	Biscuits and Bath, NYC _____
Karis Community, Denver, CO _____	Putnam Trust Co., Greenwich, CT _____
Griffin Ford, Greenwich, CT _____	Insurance & Financial Services Stamford, CT _____
Ivey, Barnum and O'Mara, Greenwich _____	Franciscan Oaks, Denville, NJ _____

RESPONSE: Notwithstanding the foregoing General Objections incorporated by reference herein and without waiving same, defendant avers that she does not know what the foregoing entities (or employees thereof) know or do not know about the terms and conditions of plaintiff's work as defendant's personal assistant.

- 4.A. Did plaintiff ever ask you to sign a contract regarding his pension?
1. When, if anytime, did he do this?
  2. Was the reason that Plaintiff did not request a contract in writing that he wanted his relationship with you to be founded on mutual trust?
  3. If not, what was the reason(s) for his inaction.

RESPONSE: Notwithstanding the foregoing General Objections incorporated by reference herein, defendant denies that plaintiff had a "pension" as defined in the Complaint or as suggested herein. Defendant does not recall being asked to sign such a writing. Defendant denies knowledge of why plaintiff acted or did not act as alleged in this case.

- 5.A. Did you tell Plaintiff that you had been empowered by the terms of one of your trusts to make a one-time gift of one million dollars to any person of your choosing?
- B. If this is not exactly what you told Plaintiff, what did you tell Plaintiff exactly?
- C. Did you tell this to plaintiff in 2006?
- D. How many people had you told this before telling Plaintiff?
1. What are their names and addresses?
- E. How many people have you told about this after telling Plaintiff?
1. What are their names and addresses?
- F. What was your reason(s) for telling plaintiff about your empowerment?

RESPONSE: Notwithstanding the foregoing General Objections and without waiving same, defendant avers that she did disclose to plaintiff a trust that contemplated a one-time gift as alleged. Other than attorney-client communications regarding trust documents, which remain confidential, defendant discussed the empowerment with Gerry White, her business adviser, in or about April 2007. Defendant confided such information in plaintiff due to plaintiff's position as defendant's personal assistant, in which defendant trusted plaintiff with information regarding her financial affairs.

# **EXHIBIT E**

# EDWARDS ANGELL PALMER & DODGE LLP

51 John F. Kennedy Parkway Short Hills, NJ 07078 973.376.7700 fax 973.376.3380 eapdlaw.com

June 27, 2007

Mr. Robert Bernard  
82 Timberbrook Road  
Rockaway, NJ 07866


Re: Bernard v. Spencer

Dear Mr. Bernard:

I am writing in response to your letter dated June 24, 2007 following up on my recent telephone message.

Please be advised that this office has been unable to communicate directly with Ms. Spencer regarding discovery or settlement due to her recent hospitalization and current health. Thank you in advance for your understanding during this difficult time.

Very truly yours,

  
Mary L. Moore

Cc: Martin Aron, Esq.